IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1284 of 2001

with

SPECIAL CIVIL APPLICATION No 6335 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JETHAVBHAI KALUBHAI DER

Versus

CHAIRMAN & MG. DIRECTOR

Appearance:

1. Special Civil Application No. 1284 of 2001
   MR PH PATHAK for Petitioner No. 1
   MR HARDIK C RAWAL for Respondent No. 1-2
2. Special Civil Application No. 6335 of 2000
   MR HARDIK C RAWAL for Petitioner No. 1
   MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/03/2002

COMMON ORAL JUDGEMENT

#. Heard Mr.P.H.Pathak, learned advocate appearing on behalf of the petitioner - workman and Mr.H.C.Rawal, learned advocate for respondent Corporation in connection with these two Special Civil Application Nos.1284 / 2001 and 6335 / 2000. However, it is noticed that earlier one of this petitions, viz. Special Civil Application No.6335 / 2000 was dismissed in default by this Court but pursuant to the order dated 7th March, 2002 passed in Misc. Civil Application No.310 / 2002, this petition is restored to its original file and number. Therefore, at the request of learned advocate Mr.H.C.Rawal on behalf of the Corporation, this matter is also heard with the petition filed by the workman and they are disposed of this common order.

#. The S.T. Corporation - petitioner in Special Civil Application No.6335 / 2000 has challenged the award passed by the Labour Court, Amreli in Reference No.499 / 1998 dated 10th December, 1999 wherein the labour court has granted reinstatement while setting aside the dismissal order dated 3rd June, 1997 with continuity of service without backwages of the interim period but awarded the punishment of stoppage of one increment with cumulative effect. This very award has also been challenged by the workman in Special Civil Application No.1284/ 2001 mainly challenging denial of backwages of the interim period. Both these petitions are admitted by this Court. In Special Civil Application No.6335 / 2000 preferred by the petitioner Corporation, this Court has granted interim relief staying the operation of the award in question.

#. It is necessary to note one undisputed aspect that the award in question passed by the labour court, Amreli, is exparte award as same is passed in absence of the petitioner - S.T. Corporation. No written statement has been filed by the petitioner Corporation and no documents were produced and no one examined by the petitioner Corporation before the labour court. The allegations against the respondent workman that he was on route from Hirana to Amreli, at that time, his bus was checked by the checking staff. On said occasion it was found that 36 passengers and 2 children were without tickets, however, it was also found that the fare was also not collected by the respondent workman - conductor. The another misconduct against the respondent workman was that he had misbehaved with the checking staff and not cooperated with the checking staff during inquiry. The third allegation against the respondent workman that

while he was on duty, he was doing road booking which is contrary to the Rules of the Corporation. On the basis of aforesaid allegations, chargesheet was served on the respondent workman and ultimately, after completion of the departmental inquiry, the respondent workman was dismissed from service on 3rd June, 1997. Learned advocate Mr.H.C.Rawal appearing on behalf of the petitioner Corporation has submitted that finding given by the labour court is contradictory. No doubt, according to him, fare was not collected by the respondent workman but the second charge of negligence which is not only serious in nature which amounts to loss to the Corporation and therefore, for the said proved charge, punishment of dismissal awarded by the authority is just and proper. Mr.Rawal, learned advocate for petitioner Corporation has submitted that the labour court has, on one occasion, come to the conclusion that the checking staff has not checked the cash and other formalities, on the other hand, come to the conclusion that charge against the respondent conductor for not cooperating with the checking staff has been established. Thus, this is contradictory conclusions arrived by the labour court and therefore, the labour court has come to erroneous conclusion while exercising the powers under the provisions of the Industrial Disputes Act, 1947. It is also pointed out by Mr.Rawal, learned advocate for petitioner Corporation that looking to the past record of the respondent which was not produced before the labour court, wherefrom it reflects that similar incidents recorded against the respondent workman in past. Therefore, for this misconduct proved before the labour court against the respondent workman, according to Mr.Rawal, learned advocate for petitioner Corporation, the labour Court has taken very lenient view and granted relief of reinstatement with continuity of service with minor punishment of stoppage of one increment and therefore, the punishment imposed by the labour court is not sufficient and hence, some more stringent and severe punishment may be imposed when two charges have already been established against the respondent workman.

#. Learned advocate Mr.P.H.Pathak on behalf of the respondent workman has submitted that there was very short distance say about 5 km. between Isvariya to Amreli and in all 80 [eighty] passengers were fond in the bus at the time of checking of the bus. The checking was conducted immediately from Isvariaya and therefore the respondent conductor was not able to do stand booking and therefore, he started road booking. He also submits that the labour court has considering finding recorded by the inquiry officer. In respect of the charge of

dishonesty and misappropriation, the labour court has come to the conclusion that finding on said charge is not established from the record. He also submits that the past record was not produced before the labor court and therefore, this Court cannot consider such past record at this stage while exercising the powers under Article 226 and 227 of the Constitution. Mr.Pathak, learned advocate for respondent has submitted that after considering the entire record, the labour court has come to the conclusion that two charges of not giving cooperation to the checking staff at the time of checking and other of doing road booking contrary to the Rules, established from the record against the workman. Therefore, considering these charges, the punishment of dismissal is harsh and hence, the labour court has rightly exercised the powers under Section 11-A of the I.D.Act, 1947 and denied backwages and awarded punishment of stoppage of one increment with permanent effect and this can be said to be sufficient punishment and therefore, petition fled by the petitioner Corporation requires to be dismissed. However, he submits that on the contrary, the respondent workman is entitled to full backwages of the interim period because for the punishment against the misconduct in question established before the labour court has already been imposed by the labour court and therefore, amount of backwages must have to be paid by the petitioner Corporation. Thus, Mr.Pathak, learned advocate for respondent workman has made submissions in support of his petition for granting backwages of the interim period.

#. I have considered submissions of the learned advocates for the parties. The facts in respect of the misconduct are not much disputed between the parties. The bus had started from Ishvariya to reach Amreli. Nobody was sure at which place from Ishvariya to Amreli the bus was checked but within short distance of 5 km. the bus was checked. At the time of checking of the bus, in all 80 passengers were in the bus, out of whom, 36 persons + 2 children found without tickets. It has come on record that the respondent workman conductor was doing road booking which was not permissible under the Rules. As per the stand taken by the respondent workman, it was difficult for him to do stand booking at each and every stop because he had to reach the destination in time and therefore, according to him, some time according to the circumstances, he had to do road booking though it is contrary to the Rules. The second allegation for not giving cooperation to the checking staff which can be said to be little serious one because it is duty of the respondent workman to give cooperation with the checking

staff at the time when checking is conducted. The respondent workman cannot say no to the checking staff and not to allow the checking staff to check the bus. The labour court has considered the aspect that no fare was collected from any passengers and no ticket was issued to said passengers. Therefore, looking to these two misconduct for not giving cooperation to the checking staff and to do road booking, punishment of dismissal imposed by the authority is considered to be harsh by the labour court. The labour court has considered one more aspect that no independent witness was examined nor passenger or any other independent person except the reporter to establish the charge against the respondent conductor. Even cash was not checked by the checking staff and therefore, the labour court has come to the conclusion that no serious charge of dishonesty and misappropriation is proved against the respondent conductor and therefore, powers under Section 11-A of the I.D.Act has been exercised by the labour court granting reinstatement with continuity of service without backwages of interim period and imposed punishment of stoppage of one increment with permanent effect.

#. This Court has perused the entire impugned award passed by the labour court and the material on record. The labour court has given cogent reasons in support of its conclusion. The labour court has reappreciated the evidence which was led in the departmental inquiry proceedings and after reappreciating the evidence, come the conclusion that only two charged established against the respondent conductor and therefore, the order of reinstatement has been passed in favour of the workman concerned. Considering two charges, according to my opinion, charge of not giving cooperation to the checking staff can be said to be little serious in comparison to the charge of doing road booking at the time when bus was plying on its route. Therefore, the labour court should have considered this aspect while awarding punishment and some more severe punishment ought to have been imposed on the respondent workman for the misconduct of not giving cooperation to the checking staff. Therefore, considering all these aspects of the matter, according to my opinion, if punishment imposed by the labour court of stoppage of one increment with permanent effect is enhanced by stoppage of two increments with permanent effect, will meet the ends of justice.

#. In the result, the petition i.e. SCA No.6335/00 preferred by the S.T.Corporation is partly allowed. The impugned award passed by the labour court, Amreli in Reference No.499 / 98 dated 10th December, 1999 is

modified to the extent that the punishment imposed by the labour court on respondent workman of stoppage of one increment with permanent effect is enhanced by stoppage of two increments with permanent effect, whereas the direction of reinstatement in favour of the workman with continuity of service without backwages of the interim period is not disturbed by this Court. Since the petition filed by the petitioner S.T.Corporation is partly allowed in aforesaid terms, the second petition i.e. SCA No.1284 / 2001 preferred by the respondent workman is hereby dismissed.

#. Learned advocate Mr.P.H.Pathak on behalf of the respondent workman has submitted that the award dated 10th December, 1999 has not been implemented by the petitioner Corporation till date and therefore, some suitable directions may be issued on the petitioner Corporation to implement the award in question. Considering the request of the learned advocate Mr.Pathak, it is directed to the petitioner Corporation to reinstate the respondent workman with effect from 10th December, 1999 within period of one month from the date of receiving the copy of this order. It is further directed to the petitioner Corporation to pay full wages to the respondent workman from 10th December, 1999 till the date of actual reinstatement within period of two months from the date of receiving the copy of this order.

Rule issued in SCA No.6335/2000 is made absolute, whereas Rule in SCA No.1284/2001 stands discharged accordingly. No order as to costs.

Direct Service is permitted to the respondent workman.

Date : 8-3-2002 [H.K.Rathod, J.]

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